IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
October 15, 2008 Session

# STATE OF TENNESSEE v. JOSHUA DOUGLAS WINEMILLER

**Direct Appeal from the Circuit Court for Blount County**
**No. C-15792 Michael H. Meares, Judge**

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**No. E2008-00097-CCA-R3-CD - Filed November 20, 2008**

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The Defendant pled guilty to driving under the influence, first offense, a Class A misdemeanor. In accordance with Tennessee Rule of Criminal Procedure 37, the Defendant reserved as a certified question of law the issue of whether the stop of the Defendant's vehicle that led to his indictment and guilty plea were constitutional. After a thorough review of the record and relevant authorities, we conclude that the stop of the Defendant's vehicle was constitutional, and, therefore, we affirm the trial court's judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JERRY L. SMITH and JOHN EVERETT WILLIAMS, JJ., joined.

Eugene B. Dixon, Maryville, Tennessee, for the Appellant, Joshua Douglas Winemiller.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Leslie E. Price, Assistant Attorney General; Michael L. Flynn, District Attorney General; Tammy M. Harrington, Assistant District Attorney General, for the Appellee, State of Tennessee.

## OPINION

### I. Facts

This case arises from the stop of the Defendant's vehicle by a Blount County Sheriff's Deputy that resulted in the Defendant being charged with driving under the influence. Prior to

entering a guilty plea, the Defendant filed a motion challenging the constitutionality of the stop. At the motion hearing, Officer John Foley testified that, on March 6, 2005, between 2:00 a.m. and 3:00 a.m., he was on patrol and traveling east on East Broadway in Maryville, Tennessee. He met the Defendant's vehicle, which was traveling west on the same road. Two additional vehicles traveled nearby: one, in front of the Officer's vehicle; the other, in front of the Defendant's vehicle. Officer Foley testified that the Defendant caught his attention because, although the street on which they both traveled was moderately well-lit, the Defendant was using "high beam" or "bright" headlights. Further, according to Office Foley, the Defendant did not dim his headlights when he met either the vehicle preceding Officer Foley or Officer Foley's vehicle, as is required by Tennessee Code Annotated section 55-9-407 (2006). Officer Foley explained he was especially sensitive to bright lights, because of LASIK surgery performed to correct his nyctolopia (i.e. night blindness). The Officer testified that, because he believed the Defendant was using his headlights in violation of T.C.A. section 55-9-407, he stopped the Defendant's vehicle. Evidence that the Defendant was operating a vehicle while under the influence was obtained by Officer Foley subsequent to stopping the Defendant's vehicle.

On cross-examination, Officer Foley explained that the Defendant's headlights did not cause him to lose sight of the Defendant's vehicle. He testified, however, that the Defendant's lights were significantly brighter than those of the vehicle preceding the Defendant's vehicle.

On re-direct-examination, Officer Foley clarified that, although the Defendant's bright headlights did not blind him, they did temporarily affect his vision.

At the close of the suppression hearing, the trial court found that the police officer had probable cause to stop the Defendant, and, as such, suppression of the evidence that the Defendant was driving under the influence was not warranted. It is from this judgment that the Defendant now appeals.

## II. Analysis

The Defendant contends that the police officer lacked reasonable suspicion to stop his vehicle, rendering the evidence gathered subsequent to that stop inadmissible. The State responds that the trial court properly admitted the evidence because the police officer had not only reasonable suspicion but also probable cause to believe that criminal activity was afoot, and, therefore, could conduct a brief investigatory stop.

### A. Certified Question of Law

Because this appeal comes before us as a certified question of law, pursuant to Rule 37(b) of the Tennessee Rules of Criminal Procedure, we must first determine whether the requirements of Rule 37 have been met and whether the question presented is dispositive. Tennessee Rule of Criminal Procedure 37(b) provides as follows:

> An appeal lies from any order or judgment in a criminal proceeding where the law provides for such appeal, and from any judgment of conviction . . . upon a plea of guilty . . . [if] . . . [t]he defendant entered into a plea agreement under Rule 11(e) but explicitly reserved with the consent of the state and of the court the right to appeal a certified question of law that is dispositive of the case and the following requirements are met:
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> (A) The judgment of conviction, or other document to which such judgment refers that is filed before the notice of appeal, must contain a statement of the certified question of law reserved by the defendant for appellate review;
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> (B) The question of law must be stated in the judgment or document so as to identify clearly the scope and limits of the legal issue reserved;
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> (C) The judgment or document must reflect that the certified question was expressly reserved with the consent of the state and the trial judge; and
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> (D) The judgment or document must reflect that the defendant, the state, and the trial judge are of the opinion that the certified question is dispositive of the case . . . .

*State v. Preston*, 759 S.W.2d 647, 650 (Tenn. 1988) (quoting Tenn. R. Crim. P. 37(b)(2)).

The record shows that these requirements have been met. The judgment of conviction contains a statement of the certified question of law with the judge's signature below:

> A dispositive certified question of law was expressly reserved for appellate review as part of the plea agreement in this case. The state, Defendant, and Trial Court consented to the reservation of the dispositive certified question of law and each agrees that the issue is dispositive of this case. The dispositive question of law is: whether reasonable suspicion, based upon specific and articulable facts, existed to authorize a stop of the defendant's vehicle by the Blount County Sheriff's office May 6, 2005.

The statement clearly identifies the certified question in both scope and legal limits, and it verifies that the judge and the State both expressly consented to the reservation of the certified question. Also, the statement indicates that the judge, the State, and the Defendant were of the opinion that the certified question was dispositive in the Defendant's case, and we agree. In this case, if the police

officers lacked reasonable suspicion to stop the Defendant, then all evidence supporting the guilty plea would be excluded *State v. Troxell*, 78 S.W.3d 866, 870-71 (Tenn. 2002). As such, this issue is dispositive on appeal, and we will address it.

**B. Motion to Suppress**

The Defendant claims the police stopped him without reasonable suspicion, based upon specific and articulable facts, that he had violated a traffic law or that he was about to commit a crime, and, therefore, all evidence obtained as a result of the stop should be excluded. The Defendant bases his argument on the Fourth Amendment of the United States Constitution and article I, section 7, of the Tennessee Constitution, both of which provide citizens with a right against unreasonable searches and seizures.

Both the United States and Tennessee Constitution protect against unreasonable searches and seizures. The Fourth Amendment of the U.S. Constitution proclaims that "the right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause." The Tennessee Constitution provides "people shall be secure in their persons, houses, and papers and possessions, from unreasonable searches and seizures." Tenn. Const. art. I, § 7. Generally, to search a person's property, a warrant is needed, and "evidence discovered as a result thereof is subject to suppression unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement." *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997). A trial court accordingly presumes that a warrantless search or seizure is unreasonable unless the State demonstrates that one of the exceptions to the warrant requirement applies to the search. *Id.*

One exception to the warrant requirement is when an officer has probable cause to believe there has been some criminal action involving a vehicle. *Troxell*, 78 S.W.3d at 870-871. At that point, an officer may search a vehicle for evidence supporting that belief. *Id.* For example, an officer may stop and search a vehicle if he has probable cause to believe a traffic violation has occurred. *Whren v. United States*, 517 U.S. 806, 814-17 (1996); *State v. Randolph*, 74 S.W.3d 330, 334 (Tenn. 2002); *State v. Vineyard*, 958 S.W.2d 730, 734-36 (Tenn. 1997). A second exception exists when specific and articulable facts give an officer reasonable suspicion that an offense has been, or is about to be, committed. *Terry v. Ohio*, 392 U.S. 1 (1968). The reasonable suspicion that an officer must have in order to make an investigatory stop requires "considerably less" certainty than probable cause requires. *United States v. Soklow*, 490 U.S. 1, 7 (1989).

Whether reasonable suspicion exists is determined subjectively, by examining the totality of the circumstances surrounding the stop. *State v. Smith*, 21 S.W.3d 251, 256 (Tenn. Crim. App. 1999). An officer may base his stop on personal observations, information obtained from other officers or agencies, offenders' patterns of operation, and information from informants. *See State*

*v. Lawson*, 929 S.W.2d 406, 408 (Tenn. Crim. App. 1996). The rational inferences that a seasoned officer draws from facts and circumstances may also support his reasonable belief. *Smith*, 21 S.W.3d at 256.

The standard of review for a trial court's suppression hearing mandates that its findings of fact "will be upheld unless the evidence preponderates otherwise." *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996); *accord Randolph*, 74 S.W.3d at 333. The prevailing party in the trial court is "entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." *Odom*, 928 S.W.2d at 23. Furthermore, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution and conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." *Id.* However, this court reviews trial court's application of the law to the facts de novo, without any deference to the determinations of the trial court. *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001). The defendant bears the burden of demonstrating that the evidence preponderates against the trial court's findings. *Odom*, 928 S.W.2d at 22-23; *State v. Yeargan*, 958 S.W.2d 626, 629 (Tenn. 1997).

The Defendant contends that Officer Foley violated his right against an unreasonable search and seizure when the officer stopped the Defendant's vehicle but cited only the Defendant's failure to dim his lights. Tennessee Code Annotated section 55-9-407 provides that a person violates the law when he operates a vehicle with bright headlights either: (1) within five-hundred feet of another vehicle while in a sufficiently-lit municipality; or (2) within five-hundred feet of an oncoming vehicle:

> Whenever the road lighting equipment on a motor vehicle is so arranged that the driver may select at will between two (2) or more distributions of light from headlights or lamps or auxiliary road lighting lamps or lights, or combinations thereof, directed to different elevations, the following requirements shall apply while driving during the times when lights are required:
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> (1) When there is no oncoming vehicle within five hundred feet (500'), the driver shall use an upper distribution of light; provided, that a lower distribution of light may be used when fog, dust, or other atmospheric conditions make it desirable for reasons of safety, and when within the confines of municipalities where there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet (500') ahead and when following another vehicle within five hundred feet (500'); and
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> (2) When within five hundred feet (500') of an oncoming vehicle, a driver shall use a distribution of light so aimed that the glaring rays therefrom are not directed into the eyes of the oncoming driver.

T. C. A. § 55-9-407 (2006).

As discussed above, the evidentiary difference between a finding of probable cause and a finding of reasonable suspicion is a matter of degree, not type. *Soklow*, 490 U.S. at 7. A finding of probable cause must be supported by greater indicia of illegal activity than that which must support a finding of reasonable suspicion. *Id.* As a result, where a trial court examines the evidence and determines that probable cause exists, it necessarily finds that reasonable suspicion exists, as well. Therefore, we begin by noting that the trial court's finding of probable cause serves as an implicit finding that Officer Foley had a reasonable suspicion to justify his warrantless stop of the Defendant's vehicle.

In this case, the evidence, considered in the light most favorable to the State, proves Officer Foley witnessed the Defendant operate a vehicle with bright or "high beam" headlights within the City of Maryville, Tennessee. The Defendant then failed to dim his lights when he met both the Officer's and a third-party's car, both of which were traveling in a direction opposite to the Defendant's vehicle. Officer Foley further testified that the Defendant's "high beam" headlights temporarily affected the officer's vision. Officer Foley stopped the Defendant for his failure to dim his lights within five-hundred feet of another vehicle. Based on this evidence, which the trial court found credible, we conclude the trial court, when it found the officer had probable cause to stop the Defendant, implicitly held that the police officer had reasonable suspicion, supported by specific and articulable facts, to stop the Defendant for violating a traffic law. We agree. Therefore, pursuant to *Whren v. United States*, the evidence does not preponderate against the trial court's implicit finding that the police officer had reasonable suspicion to stop the Defendant and the evidence attained from that legal stop was admissible. 517 U.S. at 810; *see also Vineyard*, 958 S.W.2d at 734-35.

## III. Conclusion

After a thorough review of the evidence and relevant authorities, we conclude that the State's action was constitutional. Accordingly, we affirm the trial court's judgment.

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ROBERT W. WEDEMEYER